

JUDGE DANIELS

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'08 CV 4781

Attorneys for Plaintiff

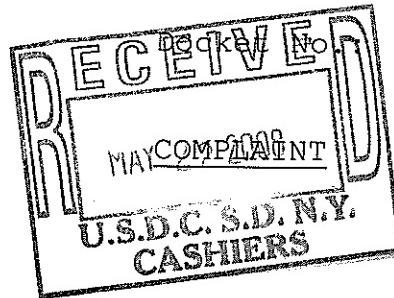
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARAVAN, LTD.

Plaintiff,

-against-

DANA KAY, INC., J.C. PENNEY CO.,
INC., MACY'S and CATHERINE
STORES CORPORATION,



Plaintiff Caravan, Ltd., by its attorneys, Profeta & Eisenstein, as and for its complaint, states as follows upon information and belief:

PARTIES, JURISDICTION AND VENUE

1. This action arises under the Copyright Laws of the United States, as hereinafter more fully appears. Jurisdiction is conferred upon this Court by 28 U.S.C. 1338.

2. Plaintiff Caravan, Ltd. ("Caravan") is a corporation duly organized and existing under the laws of the State of California with a place of business at 1384 Broadway, New York, New York, within the Southern District of New York.

3. Defendant Dana Kay, Inc. ("Dana Kay") is a corporation duly organized and existing under the laws of the State of New York, which is a manufacturer, importer and distributor of women's garments and which maintains a place of business at 1400 Broadway, New York, New York 10018, within the Southern District of New York.

4. Defendant J.C. Penney Co., Inc. ("Penney") is a corporation duly organized and existing under the laws of the State of Delaware which is a nationwide retailer of goods, including women's garments, and which maintains a place of business within the State of New York.

5. Defendant Macy's is a corporation duly organized and existing under the laws of the State of Delaware which is a nationwide retailer of goods, including women's garments, and which maintains a place of business within the State of New York.

6. Defendant Catherine Stores Corporation is a corporation duly organized and existing under the laws of the State of Tennessee, which is a nationwide retailer of

women's garments and which maintains a place of business within the State of New York.

7. Venue in this District is proper pursuant to 28 U.S.C. 1391(b) in that a substantial part of the events giving rise to the claim occurred in the Southern District of New York.

STATEMENT OF THE CLAIM

8. Plaintiff is a textile printer and converter. In 2003, plaintiff created an original fabric design that it designated as D# 61106.

9. The said fabric design was and is copyrightable subject matter under the laws of the United States.

10. At all times since 2003, plaintiff has been the owner of the copyright in the design designated D# 61106.

11. At all times since 2003, plaintiff has been, and still is, the sole rightful printer and converter of greige goods and other material bearing the copyrighted design entitled D# 61106, and has had and still has the exclusive right to sell such textiles.

12. Pursuant to such sole and exclusive right, plaintiff commenced prior to January 1, 2005, and has since continued, to print and convert greige goods into printed

textiles for wearing apparel and other purposes bearing imprints of the said copyrighted design.

13. Prior to April 28, 2008, in compliance with the copyright laws of the United States, plaintiff filed an application for copyright of its original fabric design designated D# 61106, and secured the exclusive rights and privileges in and to the copyright of the said design, and received from the Register of Copyrights certification of registration VAu 960-019, effective April 28, 2008. A copy of the certificate of registration is attached as Exhibit 1.

14. Between July 15, 2005 and October 29, 2006, defendant Dana Kay purchased from plaintiff a total of 120,917 yards of plaintiff's fabric printed with the copyrighted design designated D# 61106.

15. In October 2006, defendant Dana Kay's purchases of plaintiff's copyrighted fabric stopped. At a time unknown to plaintiff, prior to October 2006, defendant Dana Kay arranged for the production of textiles printed with a design substantially identical to plaintiff's copyrighted design designated D# 61006 ("the knockoff fabric"). Defendant Dana Kay produced or arranged for production of garments made from the knockoff fabric and sold and

continues to sell such garments to defendants Penney, Macy's and Catherine Stores.

16. Prior to April 21, 2008, defendant Penney began selling at retail garments produced by defendant Dana Kay made from the knockoff fabric.

17. Prior to April 19, 2008, defendant Macy's began selling at retail garments produced by defendant Dana Kay made from the knockoff fabric.

18. Prior to April 19, 2008, defendant Catherine Stores began selling at retail garments produced by defendant Dana Kay made from the knockoff fabric.

19. Defendants had and have no license or other form of permission to copy or use copies of plaintiff's copyrighted design designated D# 61006.

20. The aforesaid acts of defendants in manufacturing, causing to be manufactured, selling and offering for sale, garments made from fabric printed with a design copied from plaintiff's copyrighted design designated D# 61106 constitute infringement of plaintiff's copyright.

21. The aforesaid acts of defendants in manufacturing, causing to be manufactured, selling and offering for sale, garments made from fabric printed with a design copied from plaintiff's copyrighted design

designated D# 61106 are in derogation of and injurious to plaintiff's exclusive rights as author of the aforesaid copyrighted design and as owner of the copyright therein, all to the damage of plaintiff in violation of Section 106 of the Copyright Act of 1976, 17 U.S.C. §106 as amended.

22. By reason of the foregoing acts of copyright infringement by defendants, plaintiff has been damaged in an amount to be determined at trial.

23. By reason of the foregoing acts of copyright infringement of defendants, plaintiff has suffered irreparable injury.

WHEREFORE, plaintiff demands that defendants

(a) be enjoined from manufacturing, causing to be manufactured, selling and offering for sale garments made from fabric printed with a design copied from plaintiff's copyrighted design designated D# 61106;

(b) be required to pay to plaintiff damages in an amount to be determined at trial which plaintiff has sustained in consequence of defendants' infringement of the said copyright;

(c) be required to account for all gains, profits and advantages derived by defendants through their infringement of plaintiff's copyright;

(d) be required to pay such other damages as to the Court shall appear proper within the provisions of the copyright statute; and

(e) be required to pay to plaintiff the costs of this action and reasonable attorneys' fees to be allowed to plaintiff by the Court.

Dated: New York, New York
May 20, 2008

Respectfully submitted,

PROFETA & EISENSTEIN
Attorneys for plaintiff

By: 
Jethro M. Eisenstein
A Member of the Firm
14 Wall Street, 22nd Floor
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EXHIBIT 1

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

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Registration Number:

VAU 960-019

Effective date of
registration:

April 28, 2008

Title

Title of Work: D#61106

Nature of Work: FABRIC DESIGN

Completion/Publication

Year of Completion: 2003

Author

Author: CARAVAN LTD.

Author Created: Design on Sheetlike Material

Work made for hire: Yes

Domesticated in: United States

Anonymous: No

Pseudonymity: No

Copyright claimant

Copyright Claimant: CARAVAN LTD.

1620-B SO. LOS ANGELES ST., LOS ANGELES, CA 90015

Certification

Name: BEN KATZ

Date: April 18, 2008